

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

:

Case No. 3:09-cv-471

:

Magistrate Judge Michael R. Merz

:

ORDER DENYING MOTION TO DISMISS

On March 12, 2010, the undersigned filed a Report and Recommendations recommending that Respondent's Motion to Dismiss for lack of exhaustion be denied (Doc. No. 8). After the Report was filed, the parties unanimously consented to plenary magistrate judge jurisdiction under 28 U.S.C. § 636(c) and the case has been referred on that basis (Doc. No. 9), authorizing the Magistrate Judge to decide the Motion to Dismiss.

Accordingly, the Report is withdrawn and the Motion to Dismiss is denied, based on the reasoning set forth in the Report and Recommendations. If either party had intended to file objections based on disagreement with the Report and Recommendations, the party is invited to file a motion for reconsideration.

March 17, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge